

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FREDERICK J. GREDE, as Liquidation
Trustee of the Sentinel Liquidation Trust,

Plaintiff,

v.

STEPHEN M. FOLAN, JACQUES DE
SAINT PHALLE, FTN FINANCIAL
SECURITIES CORP., and FIRST
TENNESSEE BANK, N.A.,

Defendants.

Case No. 08-CV-06587
Honorable James B. Zagel

FREDERICK J. GREDE, as Liquidation
Trustee of the Sentinel Liquidation Trust,
Assignee of certain claims,

Plaintiff,

v.

FTN FINANCIAL SECURITIES
CORP. and JACQUES DE
SAINT PHALLE

Defendants.

Case No. 09-CV-02258
Honorable James B. Zagel

DEFENDANTS' MOTION FOR LEAVE TO DEPOSE PHILIP J. BAKER

Defendants Stephen M. Folan, Jacques de St. Phalle, FTN Financial Securities Corp., and First Tennessee Bank, N.A. respectfully move this Court pursuant to Fed. R. Civ. P. 30(a)(2) for leave to take the oral deposition of Philip J. Baker, a key witness in this litigation who is currently incarcerated in a federal correctional facility in Chicago. In support of the motion, Defendants state as follows:

1. Under Rule 30(a)(2), leave of court must be obtained to take the deposition of a person confined in prison, and “the court *must* grant leave to the extent consistent” with the policies set forth under Rule 26(b)(2) (emphasis added).

2. According to the February 2009 Indictment of Mr. Baker in *United States v. Philip J. Baker*, Case No. 09-cr-00175 (N.D. Ill.), attached hereto as Exhibit A (hereinafter the “Indictment”), Mr. Baker is the former managing director of the Lake Shore Group of Companies (“Lake Shore”), which operated a number of commodity pools. Indictment ¶ 1(e). Several of these pools held customer accounts at Sentinel Management Group, Inc. that were managed by Baker and Lake Shore. *See id.* ¶ 1(f) & (j).

3. The Indictment charges Mr. Baker with wire fraud, embezzlement and obstruction, among other things, in connection with a scheme to defraud Lake Shore commodity pool participants and conceal the scheme from the Commodities Futures Trading Commission and the National Futures Association. Among other things, the Indictment alleges that Baker lied about the performance of the Lake Shore funds, fraudulently obtained more than \$300 million from pool participants, and misappropriated tens of millions of dollars from the pools’ various accounts, including those held at Sentinel. *See id.* ¶¶ 3-6. The Indictment also alleges that a principal of Sentinel was listed on Lake Shore’s advisory board without the principal’s knowledge. *Id.* ¶ 12.

4. According to the Inmate Locator feature on the website of the Federal Bureau of Prisons, Mr. Baker is currently being held at Metropolitan Correctional Center (MCC) in Chicago under federal register number 22856-424. *See* Exhibit B. According to the docket in the criminal action against him, Mr. Baker’s trial is scheduled to begin on September 19, 2011. *See* Minute Entry of March 31, 2011, Exhibit C.

5. The claims being asserted by the Trustee on behalf of the Lake Shore accounts are quite significant. The outstanding claims total approximately \$113.5 million – roughly one fifth of the claims of the 16 customer groups being asserted by the Trustee in the Customer Action.

6. Mr. Baker, as the managing director of Lake Shore, is therefore a key individual in the Customer Action, especially in light of Lake Shore's prominence among the customer groups whose claims the Trustee is asserting. Baker likely possesses important discoverable information concerning Lake Shore's investment objectives, its relationship with Sentinel, any due diligence performed by Lake Shore before investing with Sentinel, and Lake Shore's knowledge of Sentinel's use of leverage and its investments in structured financial products such as the PreTSL securities FTN sold to Sentinel, among other things. The Indictment repeatedly refers to Mr. Baker's interactions with Sentinel concerning Lake Shore's accounts and the transfer of funds; it appears that Mr. Baker was chiefly responsible for Lake Shore's relationship with Sentinel.

7. The need to depose Mr. Baker is particularly great given the limited availability of known potential Lake Shore witnesses. The Trustee and Defendants have been unable to locate the two former Lake Shore employees other than Mr. Baker who appear to have had significant dealings with Sentinel. In addition, Lake Shore is currently in receivership, and the receiver does not have control over former employees or principals of Lake Shore such as Mr. Baker.

8. For the reasons set forth above, the discovery sought from Mr. Baker is not duplicative, not obtainable from a more convenient source, and the burden of the proposed discovery does not outweigh its likely benefit. *See* Rule 26(b)(2)(C)(i) & (iii). Moreover, because Mr. Baker has been in custody since his extradition to the United States in late 2009, there has been no opportunity to depose Mr. Baker in a more convenient setting.

9. WHEREFORE, Defendants respectfully ask the Court to grant leave to take the oral deposition of Philip J. Baker.

Dated: April 14, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **MOTION FOR LEAVE TO DEPOSE PHILIP J. BAKER** was filed electronically with the Clerk of the Court using the CM/ECF system on April 14, 2011, which will send notification of such filings to the parties registered with the Court's CM/ECF system, including the recipients shown below,

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